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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,974	05/23/2006	Dariusz Behnam	P71198US0	8899

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JACOBSON HOLMAN PLLC
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WASHINGTON, DC 20004

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1781

MAIL DATE	DELIVERY MODE
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06/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,974	Applicant(s) BEHNAM, DARIUSH	
	Examiner Carolyn A. Paden	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 19, 21, 25-28 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 19, 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 25-28 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 26, 2010 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 25-28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin as further evidenced by Bailey's.

Conklin teaches a composition containing essential oils (Col. 4, Line 11) and polysorbate (Col. 8, Lines 11-15) in a weight ratio of 0.5 to 5 (Col. 3, Lines 64-65). The examples show combinations of essential oil with polysorbate 20 or 80. At column 7, lines 13-29 the inclusion of tasteless oils, such as linseed oil and animal sources such as fish liver oil and sardine are contemplated for mixing with the flavorant. The ratio of

tasteless oils to polysorbate would be expected to be used in low concentration and as a diluent (see example 21 where soybean oils was used as a diluent for punch flavor). In this case, linseed oil and sardine oil are taken to be the sources for w-3 fatty acid. Baileys defines w-3 fatty acids as including linolenic acid on page 163, second full paragraph. On pages 444-445, Baileys provides evidence that linseed oil contains 55% linolenic acid. On pages 484-485 the omega 3 fatty acids of sardine oil are shown. One of ordinary skill in the art would expect a flavor delivery system with linseed oil or sardine oil as a diluent to provide the ratio of w-3 fatty acid to polysorbate of the claims. The claims appear to differ from Conklin in the recitation of the micelle size of the active ingredient.

Applicant describes micelle formation in his specification in the paragraph bridging pages 3 and 4 as including mixing the composition until it is clear. Also heating the composition to 80-100 C is mentioned. One would expect that the process, wherein the composition is prepared by warming the surfactant, adding the flavoring and mixing for 10 minutes, as disclosed in Conklin at column 10, lines 33-38, would result in a product with the micelle size of the claims because the processing is the same as that utilized by

applicant. It is known in the art that fish oil, such as sardine oil, has a flavor of its own and might be expected for use as the flavoring in Conklin.

Applicants' amendments to the claims are sufficient to overcome the rejection of the claims over Hirsh in light of Merck and Wikipedia and Echols in light of Merck and Wikipedia. The rejection of the claims under 35 USC 112, 1st paragraph has also been withdrawn in response to applicants' arguments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is

available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781